

Personnel

OLL 83-2776
18 November 1983

MEMORANDUM FOR THE RECORD

SUBJECT: Civil Service Miscellaneous Amendments Act of 1983

1. Attached for your information is the Congressional Record of 16 November 1983 that documents the subject bill and floor dialogue. This bill--H.R. 4336, passed the House and was sent to the Senate for its action.

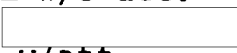
2. I note with particular interest Section 7 of the bill (starting on page H 10017) and the discussion of same (starting on page H 10020) dealing with the Navy personnel demonstration project on an experimental government pay and classification system.

3. This office will continue to follow and report on the progress of this bill.


Liaison Division
Office of Legislative Liaison

Attachment:
As stated

Distribution:

Original - OLL Record w/att.
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tions on a problem that has generated a great deal of concern on the part of senior citizens' groups across the Nation.

I, therefore, intend to vote in favor of this bill. I view this legislation as a much-needed law to afford some additional protection to the public from false and misleading ads, which use the tool of the U.S. mail, to reap a tremendous harvest of cash from an unwary public.

Eleven months ago, the Select Committee on Aging published a report which told of the financial, emotional, and physical damage done to our senior citizens and the disadvantaged in the public. That report was entitled "Business and Investment Frauds Perpetrated Against the Elderly: A Growing Scandal."

As we enter the holiday buying season, I am sure this would be a timely measure to pass. This is the most active time of the year for mail order schemes.

The damage inflicted upon our senior citizens is discouraging—and disgusting.

Today, clearly is the time for passage.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. Ford) that the House suspend the rules and pass the Senate bill, S. 450.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on S. 450, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

CIVIL SERVICE MISCELLANEOUS AMENDMENTS ACT OF 1983

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4338) to make certain miscellaneous changes in laws relating to the civil service.

The Clerk read as follows:

H.R. 4338

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Miscellaneous Amendments Act of 1983".

REAPPOINTMENT OF FORMER ADMINISTRATIVE LAW JUDGES

SEC. 2. Section 3323(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

"(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph."

FEDERAL LABOR RELATIONS AUTHORITY

SEC. 3. (a) Section 7104(b) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "The Chairman is the chief executive and administrative officer of the Authority."

(b) Section 7104(c) of title 5, United States Code, is amended to read as follows:

"(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of—

"(1) the date on which the member's successor takes office, or

"(2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire."

ARBITRATION AWARDS

SEC. 4. Section 7122(b) of title 5, United States Code, is amended to read as follows:

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title)."

DETAIL AUTHORITY TO FILL CERTAIN VACANCIES

SEC. 5. (a)(1) Section 3345 of title 5, United States Code, is amended to read as follows:

"§ 3345. Details; to office of head of a department or agency"

"When the head of an executive department, a military department, or an independent establishment (other than the General Accounting Office) dies, resigns, or is sick or absent, the first assistant to such department or establishment head, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops."

(2) The table of sections for chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3345 and inserting in lieu thereof the following new item:

"3345. Details; to office of head of a department or agency."

(b) Section 3346 of title 5, United States Code, is amended to read as follows:

"§ 3346. Details; to subordinate offices"

"When an officer of a bureau of an Executive department, a military department, or an independent establishment (other than the General Accounting Office), whose appointment is not vested in the head of the department or establishment, dies, resigns, or is sick or absent, such officer's first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops."

(c) Section 3348 of title 5, United States Code, is amended to read as follows:

"§ 3348. Details; limited in time"

"No person designated to perform the duties of an office under section 3345, 3346, or 3347 shall do so—

"(1) if designated when the Congress is in session, for more than 30 days unless a nomination to fill such vacancy has been submitted to the Senate in which case the person so designated may serve—

"(A) until the Senate confirms the nomination;

"(B) for no more than 30 days beyond the date that the Senate rejects the nomination; or

"(C) for no more than 30 days beyond the date of adjournment at the end of a session in which the Senate has failed to act on the nomination;

"(2) if designated when the Congress had adjourned sine die or at the end of a session, for more than 30 days after the Congress next reconvenes."

EXECUTIVE EXCHANGE PROGRAM

SEC. 6. (a) Section 4108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) For purposes of this section, 'training' includes a private sector assignment of an employee participating in the Executive Exchange Program of the President's Commission on Executive Exchange."

(b)(1) Section 1304(e)(1) of title 5, United States Code, is amended—

(A) by striking out clause (ii); and

(B) by striking out "(i)".

(2) Section 4109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) There is established in the Treasury of the United States a revolving fund which shall be available to the Executive Exchange Program of the President's Commission on Executive Exchange without fiscal year limitation—

"(A) for the costs of education and related travel of participants in such program; and

"(B) for printing, without regard to section 501 of title 44; and

"(C) in such amounts as may be specified in appropriations Acts, for entertainment expenses.

"(2) Participation fees which the President's Commission on Executive Exchange may impose and collect for participation in its Executive Exchange Program (including the balance of any participation fees collected under former section 1304(e)(1)(ii) of this title as of the effective date of this subsection) shall be credited to the revolving fund."

AUTHORITY TO CONTINUE DEMONSTRATION PROJECT

SEC. 7. The Department of the Navy is authorized to continue implementation of the personnel demonstration project authorized by section 4703 of title 5, United States Code, and currently in operation at the

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Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San Diego, California, until September 30, 1990, without regard to section 4703(d)(1)(B) of such title.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 20 minutes and the gentleman from California (Mr. PASHAYAN) will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, The bill I bring before the House today contains the noncontroversial features of H.R. 4133, a bill I introduced in October. The Civil Service Subcommittee, which I chair, held hearings on this bill on November 1. At this hearing, we heard from the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), the Office of Special Counsel of the Merit Systems Protection Board, the Federal Labor Relations Authority (FLRA), the President's Commission on Executive Exchange, the Senior Executive Association, the Federal Managers' Association, the American Federation of Government Employees, the National Treasury Employees Union, the National Federation of Federal Employees, and the Government accountability project. The Department of the Navy was invited but declined to appear. H.R. 4336 contains those provisions of H.R. 4133 which none of the witnesses opposed.

Before describing the contents of H.R. 4336, I want to make clear that I have not given up on the rest of H.R. 4133. H.R. 4133 placed the civil services agencies of the Federal Government on 3-year expiring authorizations, contained language to increase the independence and authority of the Office of Special Counsel, and would have permitted employees who won appeals at the presiding official level of MSPB to be reinstated. Each of these provisions engendered some controversy and, for that reason, was dropped from H.R. 4336. Yet, they are important changes which should be made and I hope the House will have an opportunity to consider them next year.

H.R. 4336 was not reported by the Committee on Post Office and Civil Service because of the time constraints of the end of the session. Yet, as far as I know, there is no opposition to any portion of this bill.

H.R. 4336 contains eight provisions making changes in civil service laws:

REAPPOINTMENT OF RETIRED ADMINISTRATIVE LAW JUDGES

Section 2 provides for the reappointment of administrative law judges (ALJ's) for specified periods or for the period necessary to complete specified cases. Current law, contained in 5 U.S.C. 3323(b), provides that retired Federal workers can be rehired. Such reemployed annuitants serve at the will of the agency. This scheme makes sense for most reemployed annuitants, since there is no reason to provide workers who are collecting retirement benefits with the same tenure rights as those provided to younger workers who would be without income if separated.

Yet, in the case of administrative law judges, serving at the whim of the agency head is inappropriate. Administrative law judges are required to be independent of the direction of the agency head in rendering decisions. For them to be subject to dismissal at will could undermine this independence. Removal with no reason given would hang over their heads like a sword, and would compromise their decisional process. On the other hand, we do not want retired administrative law judges hired indefinitely to avoid hiring new people. So, the provisions of this section provide for the rehiring of retired administrative law judges for fixed terms, be it a specified period of time or a specified case or cases.

Section 2 is derived from H.R. 2226, introduced by Mr. BARNES of Maryland. In supporting this provision, the Office of Personnel Management (OPM) said it would be useful because "agencies sometimes experience unexpected retirements and/or temporary increases in ALJ workload and could make effective use of retired administrative law judges in these cases." Like OPM, I believe the authority to reemploy retired administrative law judges should be used sparingly.

FLRA CHAIRMAN ADMINISTRATIVE RESPONSIBILITIES

Section 3(a) of H.R. 4336 makes the chairperson of the Federal Labor Relations Authority (FLRA) the chief executive and administrative officer of the Authority. This ends the confused administrative control system which has existed at the Authority since it opened its doors in early 1979.

The Civil Service Reform Act of 1978 (together with Reorganization Plan No. 2 of 1978) established the Federal Labor Relations Authority. Section 7104(b) of title 5, United States Code, as enacted by the Civil Service Reform Act of 1978 (Public Law 95-454), provides that "the President shall designate one member to serve as Chairman of the Authority." The statute contained no elaboration concerning the role of the chairperson of the FLRA. As a result of this sparse legislative record, the first solicitor of the Authority rendered an opinion, on January 23, 1979, stating that "the Chairman of the agency is not clothed with any special powers and duties by

reason of his designation as Chairman, except for the authority to preside at meetings of members of the agency." The opinion went on to state, "However, the other members may properly delegate to the Chairman such additional powers and duties as they desire, so long as the delegation is not inconsistent with applicable statutes."

The three Authority members and the General Counsel signed a delegation of authority to the executive director of FLRA on September 11, 1979. This delegation reserved to the Authority policy decisions and gave the executive director "final authorities" over "personnel management, fiscal management, general administrative support services, property management, procurement and contracts, and personnel, property and document security, and management analysis and program evaluation."

In practice, this delegation was not successful. In 1981, the Authority contracted for more than \$255,000 worth of furniture and office furnishings, in violation of the Federal property management regulations, the President's moratorium on furniture procurement, and the Anti-Deficiency Act. After studying this gross waste of public funds, the General Accounting Office concluded that, "In our opinion, many of the administrative and management problems discussed in this report can be traced back to authority and responsibility being shared equally among the three members, rather than the designated chairman being the agency head."

Responding to the fact that the Subcommittee on Federal Expenditures, Research and Rules of the Senate Committee on Governmental Affairs announced hearings on the furniture purchases on May 20, 1982, the members of the Authority that day signed a delegation to the Chairman of "responsibility and authority for the management of internal administrative matters." This May 20 memorandum continues in effect.

Frankly, I am not happy with the administrative structure of the FLRA today. While the question of administrative authority over procurement, fiscal management, and office services is well settled, authority over personnel management has remained too dissipated. Right now, the Authority has a unitary staff which serves all three Authority members. Hence, each member of the staff reports to each of the three Authority members. This system was adopted to reduce the personnel costs of the agency. Whether it succeeds in doing so or not, the unitary staff system creates other problems, which may be exacerbated by making the chairman the chief executive officer, as this bill does. Specifically, this bill gives the chairman final authority over personnel matters, including the Senior Executive Service, within the Authority. A malicious chairman could use this authority to

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undermine the effectiveness of the other two Authority members. Clearly, I do not intend for this to occur.

Rather, I believe that the Authority should move away from its completely unitary staff. To function effectively, each Authority member needs his or her own legal staff to draft decisions and screen cases. Clearly, each member of the Authority should have the power to select and manage his or her own staff.

We heard testimony in our hearing of November 1 to the effect that the unitary staff has resulted in lengthy and unacceptable time lags. Because any member's possible disagreement triggers a review of the decision by the staff, decisions take far too long to be issued. While the unitary staff scheme has resulted in unanimous decisions in virtually every case, this advantage is outweighed by the length of time it takes to reach these decisions. Further, I believe that more competition and even disagreement among Authority members might well result in clearer and better law from the Authority.

Under this bill, the General Counsel would continue to have wide authority over his or her own staff and over the regional staff, although, pursuant to 5 U.S.C. 7105(d), the full Authority retains the authority to appoint the executive director, the regional directors, and the administrative law judges.

The purpose of this section is to insure that the Chairman is the chief executive and administrative officer of the Authority while, at the same time, preserving equality and independence for each of the three Authority members in the exercise of their decisional responsibilities.

ELIMINATING OBSOLETE LANGUAGE

Section 3(b) eliminates obsolete statutory language concerning the original creation of the FLRA. The first sentence of section 7104(c) of title 5, United States Code, reads, "One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years." This provision has no further function and so this section deletes it.

EXCEPTIONS TO ARBITRATION AWARDS

Section 4 of H.R. 4336 clarifies the time period within which an exception to an arbitration award must be filed. The Federal Service Labor-Management Relations statute, which was passed as title VII of the Civil Service Reform Act, provides for final and binding arbitration by independent arbitrators for a wide variety of labor-management disputes. To guard against the rare and exceptional case in which an arbitrator's decision was contrary to law or otherwise met the strict standards the courts have set for overturning an arbitrator's decision, an appeals route to the FLRA was established.

Far too many cases have been appealed for exceptions to arbitration awards under section 7122 of title 5. Since the effectiveness of the arbitra-

tor's award is stayed until the FLRA decides the exception and because it takes so long to decide these cases, there is a real incentive for parties to file for exceptions, if only to delay the impact of a disliked decision. FLRA should move aggressively to decide virtually all of exceptions to arbitration awards within 60 days of their being filed.

Section 4 of H.R. 4336 deals with a far narrower problem. Currently, the 30-day period for filing an exception runs from the date which is written on the award itself. Since arbitrators are not infallible in promptly mailing their orders, the 30-day period may be truncated by the negligent action of an individual who is not even a party to the proceedings. So, this provision starts counting the 30-day period on the date the award is served on the parties. It is our intention that the term "the date the award is served" has the same meaning as it has in Federal court practice.

EXTENDING COVERAGE OF VACANCIES ACT

Section 5 of H.R. 4336 brings within the terms of the Vacancies Act (5 U.S.C. 3345 through 3349) the independent agencies of the executive branch of Government. This change was recommended by the General Accounting Office (GAO) in a letter to the Speaker on August 24, 1983.

The Vacancies Act was originally enacted as part of the act of July 23, 1868. Sections 3345, 3346, and 3347 of title 5 provide methods for temporarily filling vacancies created by death, resignation, sickness, or absence of the head of an executive or military department, or the head of an office or bureau within such a department whose appointment is not vested in the head of the department. Ordinarily, such office or bureau heads would be appointed by the President. Section 3349 makes the methods for detailing individuals to fill vacancies provided in sections 3345, 3346, and 3347 the exclusive means of doing so, except in the case of recess appointments provided in 5 U.S.C. 5503.

Section 3348 of title 5, United States Code, is intended to encourage the president to move rapidly to submit nominations to fill vacancies. To do so, it provides that individuals detailed to fill a position under sections 3345, 3346, and 3347 may only serve in such a position for 30 days while the Congress is in session, unless the President submits a nomination.

This section of H.R. 4336 extends the provisions of the Vacancies Act to independent agencies, such as the Federal Labor Relations Authority, and clarifies the language of 5 U.S.C. 3348 concerning time limitations for details.

Some independent agencies have, within their own organic legislation, provisions for the performance of functions ordinarily vested in a Presidentially appointed official during a period following the death or resignation of such individual. Many do not

and, hence, have no mechanism for orderly interim transition.

In the case of the Federal Labor Relations Authority, the General Counsel is appointed by the President and assigned to perform certain functions. However, there is no provision for the President to designate someone to act in that capacity during the period of a vacancy. In hearings before the subcommittee on Civil Service in March 1983, the FLRA pointed out that, "In the absence of a General Counsel, these functions [ordinarily performed by the General Counsel] cannot be performed under the Statute."

Similarly, the GAO has questioned the ability of an Acting Special Counsel to discharge the statutory obligations of the Special Counsel.

We did not include GAO's further recommendation that the time limit be extended from 30 to 40 days. That decision is more appropriately made by the Senate, which has the responsibility to confirm Presidential nominees.

The language clarification of 5 U.S.C. 3348 is not intended to change current practice.

EXECUTIVE EXCHANGE TRAINING ACT SERVICE AGREEMENTS

Section 6(a) of H.R. 4336 makes it clear that the executive exchange program run by the President's Commission on Executive Exchange, constitutes training within the meaning of 5 U.S.C. 4108, meaning that employees have to sign a service agreement prior to participating in the training. The service agreement must provide that the employee will remain in the service of his or her agency at the end of training for a period of time equal to three times the length of the training and that the employee will pay the Government the cost of the training if he or she leaves before the end of this period. The payment can be waived under certain circumstances.

The President's Commission on Executive Exchange was established under Executive Order No. 12136, issued by President Lyndon B. Johnson on January 19, 1969. The Commission runs the executive exchange program which is "designed to provide a means through which a mutual understanding and a better working relationship is achieved between the private sector and the Federal Government through the exchange of high-caliber, senior executives from each sector through a 1-year work assignment in the opposite sector through which exchanged executives become aware of and seek ways to resolve major issues impacting both sectors on a national and international basis."

The Subcommittee on Civil Service examined the operations of the executive exchange program over the past year. It is a program which brings an average of 24 midlevel corporate managers into Government positions at around the GS-15 level and places an average of 18 GS-15 Government offi-

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cials in midlevel corporate positions each year. While corporate participation has grown, Government participation has declined over the past 4 years. In looking into the program, the subcommittee was particularly conscious of possible conflicts of interest. Although few of the private sector participants are placed in jobs which have much to do with their private sector employment, most of the Government employee participants are placed in corporate jobs closely related to their Government employment. This is a matter of concern.

Of the 73 Government participants over the past 4 years, 5 did not return to their Government jobs. Section 6(a) of this bill should reduce that number.

EXECUTIVE EXCHANGE EXTENSION OF REVOLVING FUND

Section 6(b) of H.R. 4336 reestablishes a revolving fund for the executive exchange program. This section makes permanent the authority Congress provided last year on a 1-year basis in Public Law 97-412.

Federal agencies pay \$3,000 and private firms pay \$6,000 for the educational program provided for participants. Up until 1982, the funds collected from private firms were kept in a deposit account in the Treasury. It was finally concluded that the Treasury and the President's Commission lacked legal authority to handle the funds this way. As a consequence, the revolving fund incorporated in Public Law 97-412 was requested.

In this legislation, we continue the authority to use a revolving fund. However, the authority is transferred from section 1304(e)(1)(i) of title 5 to chapter 41 dealing with training, where it is more appropriate. The corpus of the Public Law 97-412 fund should be transferred to the fund created by this bill.

EXTENSION OF NAVY PERSONNEL DEMONSTRATION PROJECT

Section 7 extends until September 30, 1990, the 5-year time limit on demonstration projects, contained in section 4703 of title 5, United States Code, in the case of the personnel demonstration project being conducted by the Department of the Navy at the Naval Weapons Center, China Lake, Calif., and at the Naval Ocean Systems Center, San Diego, Calif.

One of the stated purposes of the Civil Service Reform Act was that "research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional oversight, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public." Section 3(8) of Public Law 95-454. The project run by the Navy at these two facilities is the first of these demonstration projects.

Under the 5-year limitation contained in section 4703 of title 5, the

project is slated to end in June 1985. This is not advisable for two reasons. First, the demonstration project experiments with, in part, a new classification system which is supposed to help recruitment and retention. There is no doubt that the recruitment and retention figures in 1981 and 1982 are better than previous years. Yet, since this was a period of recession, particularly in the scientific fields which make up the backbone of the work forces of these facilities, it is impossible for the committee to distinguish the effects of the economic downturn from the effects of the demonstration project. Another 5 years of operation should provide Congress with solid data on the effectiveness of this experimental system.

Second, having moved to a new classification system, the conversion back to the general schedule would either cost the Government a lot of money or would reduce the pay of employees. This would cause substantial disruption and probably wipe out the gains which have been made. We are, therefore, reluctant to cut off this program unless it is necessary to do so. Another 5 years will more clearly indicate the desirability of continuation or reversal.

The Committee on Post Office and Civil Service will continue strict oversight over this project.

Mr. PASHAYAN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. PASHAYAN asked and was given permission to revise and extend his remarks.)

Mr. PASHAYAN. Mr. Speaker, I rise in support of H.R. 4336, the Civil Service Miscellaneous Amendments Act of 1983. The provisions of this legislation provide efficient and effective adjustments to the current civil service laws. The chairwoman of the Civil Service Subcommittee, Mrs. SCHROEDER, and I have worked to assure that the changes we make today remedy difficulties which have hindered the civil service agencies in their pursuit of their mandated goals.

This legislation began as H.R. 4133, a piece of legislation that would have made sweeping changes in the structure of the civil service agencies. Many of the proposals, such as advance year authorizations and the restructuring of the relationship between the Merit Systems Protection Board and the Office of Special Counsel, were unprecedented and highly controversial. I am happy to tell my colleagues here today that this bill before you took the best elements of H.R. 4133. The amendments focus on positive changes for the Federal Labor Relations Authority, the President's Commission on Executive Exchange, personnel demonstration projects, the administrative law judge corps, and the civil service as a whole.

Among its provisions, the bill allows retired administrative law judges to be reappointed for a specified time or for

a specific case. In addition, the date on which the 30-day period for filing exceptions to arbitration awards with the Federal Labor Relations Authority is changed. The period will not begin to run 30 days from the date of service of the award.

The bill also extends the authority of the President's Commission on Executive Exchange to collect participation fees from private companies beyond the current date of December 31, 1983. A special revolving fund is designated to hold the collected money. This provision is welcomed by the chairwoman of the President's Commission on the Executive Exchange. It is appropriate that the private sector is underwriting its participation in the Exchange and that taxpayers do not have to bear the financial burden of the program.

I urge you to support the passage of H.R. 4336.

● Mr. WOLF. Mr. Speaker, I rise in support of H.R. 4336, the Civil Service Miscellaneous Amendments of 1983. As a member of the Subcommittee on Civil Service, I believe this bill is a positive step to improve and fine tune the Civil Service Reform Act of 1978. It incorporates provisions of H.R. 2226, which I have cosponsored, by providing opportunities for former retired administrative law judges to be recalled to service to help with backlogs.

I urge my colleagues to support H.R. 4336 and wish to commend the chairwoman of the subcommittee on Civil Service, Representative SCHROEDER, for her efforts to bring this important measure to the floor. ●

● Mr. BARNES. Mr. Speaker, I want to commend the gentlewoman from Colorado, Mrs. SCHROEDER, for the work she has done on this legislation and for bringing it to the floor expeditiously. H.R. 4336 contains within it the provisions of H.R. 2226, a bill which I introduced at the beginning of the 98th Congress which would allow the recall to active service of retired administrative law judges for specified periods. The gentleman from Maryland, Mr. Hoyer, and the gentleman from Virginia, Mr. Wolf, joined me in supporting the legislation, and Senator MATIAS has introduced an identical bill, S. 728.

Retired administrative law judges have a wealth of experience in Government, and many of them have the desire to continue to serve the public interest on a part-time basis as the caseloads at Federal agencies might require. This legislation would permit retired administrative law judges to preside over specific regulatory proceedings, subject to regulations prescribed by the Director of the Office of Personnel Management. They would have the same independence in reaching their decisions that full-time ALJs have. The administration and the legal community support the legislation, which would help relieve shortages of

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judges in active service and reduce delays in disposing of case backlogs. As a result, regulatory proceedings will proceed more smoothly with a savings to the public in money and manpower.

Mr. PASHAYAN. Mr. Speaker, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado (Mrs. SCHROEDER) that the House suspend the rules and pass the bill, H.R. 4336.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on H.R. 4336, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

MILITARY JUSTICE ACT OF 1983

Mr. MONTGOMERY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 974) to amend chapter 47 of title 10, United States Code—the Uniform Code of Military Justice—to improve the quality and efficiency of the military justice system, to revise the laws concerning review of courts-martial, and for other purposes, as amended.

The Clerk read as follows:

S. 974

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES TO THE UNIFORM CODE OF MILITARY JUSTICE

SECTION 1. (a) This Act may be cited as the "Military Justice Act of 1983".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

INCLUSION OF LAW SPECIALISTS OF THE COAST GUARD WITHIN DEFINITION OF JUDGE ADVOCATE

SEC. 2. (a) Clause 13 of section 801 (article 1(13)) is amended to read as follows:

"(13) 'Judge advocate' means—

"(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

"(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

"(C) an officer of the Coast Guard who is designated as a law specialist."

(b) The first sentence of section 806(a) (article 6(a)) is amended by striking out

"and Air Force and law specialists of the" and inserting in lieu thereof "Air Force, and"

(c) Section 815(e) (article 15(e)) is amended by striking out "of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or" and inserting in lieu thereof "or a lawyer of the".

(d) Section 827 (article 27) is amended—

(1) in subsection (b)(1), by striking out "of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,"; and

(2) in subsection (c)(3), by striking out "or a law specialist,".

(e) Section 842(a) (article 42(a)) is amended by striking out "law specialist," both places it appears in the third sentence.

(f) Section 936(a) (article 136(a)) is amended—

(1) in clause (1), by striking out "of the Army, Navy, Air Force, and Marine Corps"; and

(2) by striking out clause (2) and redesignating clauses (3) through (7) as clauses (2) through (6), respectively.

MATTERS RELATING TO THE MILITARY JUDGE, COUNSEL, AND MEMBERS OF THE COURT-MARTIAL

SEC. 3. (a) Section 816(1)(B) (article 16(1)(B)) is amended by inserting "orally on the record or" before "in writing".

(b) Section 825 (article 25) is amended by adding at the end thereof the following new subsection:

"(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant."

(c)(1) Section 826 (article 26) is amended—

(A) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed."; and

(B) in the first sentence of subsection (c), by striking out "by the convening authority, and, unless" and inserting in lieu thereof "in accordance with regulations prescribed under subsection (a). Unless".

(2) Section 827(a) (article 27(a)) is amended—

(A) by striking out "For each" and all that follows through "appropriate." and inserting in lieu thereof the following: "(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial."; and

(B) by designating the sentence beginning "No person who has acted as investigating officer" as paragraph (2) and by striking out "assistant defense counsel" in such sentence and inserting in lieu thereof "assistant or associate defense counsel".

(d) Section 829(a) (article 29(a)) is amended by striking out "except for" and all that

follows through the period and inserting in lieu thereof the following: "unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause."

(e)(1) Section 838(b)(6) (article 38(b)(6)) is amended by striking out "a convening authority" and inserting in lieu thereof "the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel".

(2) Paragraph (7) of section 838(b) (article 38(b)(7)) is amended by inserting after the first sentence the following new sentence: "Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member."

(3) Section 838(c) (article 38(c)) is amended to read as follows:

"(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

"(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

"(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

"(3) may take other action authorized by this chapter."

(f) Section 842(a) (article 42(a)) is amended by striking out "assistant defense counsel" in the first and third sentences and inserting in lieu thereof "assistant or associate defense counsel".

PRETRIAL ADVICE AND REFERRAL OF CHARGES

SEC. 4. (a)(1) The first sentence of section 834(a) is amended by striking out "or legal officer".

(2) The second sentence of such section is amended to read as follows: "The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

"(1) the specification alleges an offense under this chapter;

"(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

"(3) a court-martial would have jurisdiction over the accused and the offense."

(b) Section 834 (article 34) is further amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection (b):

"(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

"(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

"(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification."

RIGHT TO APPEAL AND RELATED MATTERS

SEC. 5. (a)(1) Section 860 (article 60) is amended to read as follows:

"§ 860. Art. 60. Action by the convening authority

"(a) The findings and sentence of a court-martial shall be reported promptly to the